

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JEANETTE WARD,  
*Plaintiff*

CIVIL ACTION NO. 17 - 759

v.

LYCOMING HOUSING AUTHORITY  
*Defendant*

ADMINISTRATIVE AGENCY APPEAL  
FINAL DISPOSITION

OPINION AND ORDER

There are two matters before the Court: an agency appeal and a petition for preliminary injunction. The Court will address the agency appeal first, followed by the petition for injunction. No full and complete record of the proceedings below having been made, and by agreement of the parties, the Court held a de novo hearing on the appeal pursuant to Section 754(a) of the Local Agency Law, 2 Pa. C.S. § 754(a).<sup>1</sup>

FINDINGS OF FACT

1. On or about January 4, 2016, Plaintiff, Jeanette Ward, submitted an online application to the Lycoming Housing Authority (LHA) for the Housing Choice Voucher Program (HCVP).
2. Ward is a 54 year old, disabled, African American woman.
3. Ward's sole household income is disability benefits in the amount of \$754.
4. Ward's current rent is \$650 per month; she must also pay utilities, trash and water which are not included in the rent.
5. Ward is behind on rent and utilities and consequently is at risk of becoming homeless.
6. Ward's online application identified Ward as meeting the federally mandated preferences for subsidized housing for being elderly, extremely low income and local.

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<sup>1</sup> The matter came before the Court on May 22, 2017 for a scheduling conference on the agency appeal and for a hearing on the petition for preliminary injunction pending the administrative appeal. At that time, the parties instead agreed to proceed with a de novo hearing on the merits of the administrative appeal. The parties agreed that a full and complete record of the proceedings before the local agency was not made, and that the Court may hear the appeal de novo.

7. Ward's online application listed her subsidized housing history as none.<sup>2</sup>
8. This was an error.
9. Over ten years ago, Ward lived at Kennedy King Manor, which had been managed by the Williamsport Housing Authority prior to it becoming part of the LHA.<sup>3</sup>
10. After waiting on the list for about a year, Ward received a request for updated information on a form entitled the "Lycoming Housing Recertification Application Section Application Update".
11. On or about February 22, 2017, Ward completed the Lycoming Housing Recertification Application Section Application Update.
12. On that form, Ward erroneously circled "NO" in response to the statement: "I/we have lived in public housing or received section 8 housing assistance before."<sup>4</sup> (That statement was followed by a place to indicate the County and Housing Agency Name.)
13. Ward believed that LHA was fully aware that Ward had previously lived at Kennedy King Manor.
14. Since Ward was applying for section 8, she believed the question being asked concerned whether or not she had previously lived in section 8.

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<b>Subsidized Housing History:</b>
NONE

<sup>2</sup>

<sup>3</sup> Prior to living at Kennedy King Manor, Ward lived at Timberland, where her rent was subsidized. Ward believed Timberland to be privately run.

<sup>4</sup>

YES or  NO I / we have lived in public housing or received section 8 housing assistance before.

County: \_\_\_\_\_ Housing Agency Name: \_\_\_\_\_

Street Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Occupancy dates: Moved in: \_\_\_\_\_ Moved out: \_\_\_\_\_

15. As part of that recertification form, Ward executed an authorization disclosure form on February 29, 2017, allowing the Lycoming Housing Authority to contact any agencies they deem necessary to complete her application, including rental agencies and credit reporting agencies.
16. LHA identified that Ward previously lived at Kennedy King from its own records and database checks.
17. When asked in person, Ward never denied previously living at Kennedy King Manor.
18. The online application and Lycoming Housing Recertification Application Section Application Update were completed outside the presence of any employee of LHA and therefore without the benefit of having an LHA employee present to answer any questions an applicant may have while completing the form.
19. The Section 8 Manager of LHA denied Ward's application, contending that Ward owed a debt to LHA and that Ward provided false or misleading information on her application.
20. Ward timely appealed that denial.
21. On April 6, 2017 an informal hearing was held regarding the denial before Jerri Rupert, a Leasing Manager of the LHA.
22. On April 18, 2017, Rupert overturned the part of the decision denying the application for owing a debt to LHA, having been convinced Ward would prevail on that issue.<sup>5</sup>
23. Rupert upheld the denial for providing false or misleading information on the housing application pursuant to the LHA, Section 8 Admission and Occupancy Policy.

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<sup>5</sup> A debt barred by the statute of limitations would not be a debt that is currently owed. In Solomon v. Hous. Auth. of the City of Pittsburgh, No. 2:06cv1155, 2006 U.S. Dist. LEXIS 98825, at \*6-7 (W.D. Pa. Sep. 18, 2006) the Western District of Pennsylvania Court noted that HUD's interpretation of the Section 8 Certificate and Voucher Programs Conforming Rule, 60 Fed. Reg. at 34689. is that a debt that is barred by the statute of limitations is not "currently owed." LHA records indicated that Ward failed to pay \$760.88 from living at Kennedy King, with the last payment being made on September 15, 2005 and no reaffirmation since then. Such debt would likely be barred by the statute of limitations and not constitute a debt currently owed.

24. The LHA, Section 8 Admission and Occupancy Policy, as quoted by Rupert, provides the following:

“LHA may reject an application and thus remove an applicant’s name from the waiting list under the following circumstances:

- Misrepresentation of any information **related to eligibility**, award of preference for admission, allowances, family composition or rent.” (Emphasis added).

25. The misrepresentation cited was Ward’s failure to indicate that she had lived at Kennedy King Manor by failing to answer the questions on the online form and on the Recertification Form in a manner expected for someone who had previously lived at Kennedy King Manor.

26. The fact that Ms. Ward previously lived at Kennedy King Manor, or any other subsidized housing tenancy, standing alone, does not relate to Ms. Ward’s eligibility, award of preference for admission, allowances, family composition or rent.

#### CONCLUSIONS OF LAW

1. A de novo hearing was held pursuant to Section 754 of the Local Agency Law.
2. “In a local agency appeal which is heard de novo, the governmental body has the burden "to prove all of the elements, both procedural and substantive, necessary to support its adjudication."” Garretson v. Stonycreek Twp., 4 Pa. D. & C.4th 506, 512-13 (Somerset C.P. 1989), citing, Lawrence Township Appeal, 117 Pa. Commw. 508, 513, 544 A.2d 1070, 1074 (1988), *quoting* Allegheny County Health Department v. Ligans, 16 Pa. Commw. 74, 78, 329 A.2d 878, 879 (1974).
3. The LHA’s adjudication was to deny Ward’s application pursuant to its policy that gives LHA the discretion to reject an application when anyone misrepresents any information related to eligibility, award of preference for admission, allowances, family composition

or rent, citing her failure to correctly complete the online form and written recertification as to her having previously lived at Kennedy King .

4. The LHA has not met its burden of establishing that Ward misrepresented “any information **related to** eligibility, award of preference for admission, allowances, family composition or rent” as required for denial under the policy quoted.
5. Previously living in public housing or Section 8 or other subsidized housing does not in and of itself relate to eligibility, award of preference for admission, allowances, family composition or rent.
6. If LHA were to process Ms. Ward’s application as if it had been approved as of March 13, 2017, Ms. Ward’s petition for injunction would be rendered MOOT.

#### DISCUSSION

“The purpose of public housing is to "remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families; and . . . to address the shortage of housing affordable to low-income families." Bray v. McKeesport Hous. Auth., 114 A.3d 442, 448 (Pa. Cmwlth. 2015), *citing*, 42 U.S.C. § 1437(a)(1). The Commonwealth Court has summarized a housing authority’s responsibilities with respect to determining eligibility.

A housing authority must establish written policies for admission of tenants, 24 C.F.R. § 960.202; the criteria must reasonably relate to individual applicants' attributes and not attributes imputed because of the applicants' membership in a particular group, 24 C.F.R. § 960.203(a); and the criteria must be in accordance with 24 C.F.R. § 5.105 (requiring nondiscrimination and equal opportunities to public housing pursuant to, inter alia, the Fair Housing Act, 42 U.S.C. §§ 3601-3619), 24 C.F.R. § 960.202(c)(3). In addition, where unfavorable information is received about an applicant, the federal regulations require a housing authority to consider mitigating factors, including "the time, nature, and extent of the applicant's conduct" when determining whether to approve an application. 24 C.F.R. § 960.203(d). Bray v. McKeesport Hous. Auth., 114 A.3d 442, 448 (Pa. Cmwlth. 2015)

In this case, LHA set forth the policy it used to reject Ms. Ward's application. However, LHA failed to establish that Ward made a misrepresentation related to eligibility, award of preference for admission, allowances, family composition or rent as required by that policy. Granted, Ward made mistakes on the online application and update form; she should have indicated that she previously lived at Kennedy King and should have circled yes on the update form. According to LHA, however, having previously lived at Kennedy King does not, in itself, impact Ward's eligibility, award of preference for admission, allowances, family compensation or rent. Therefore, LHA has not established that its policy supports denial of Ms. Ward's application.<sup>6</sup>

Ms. Ward has an extremely low income and is at imminent risk of homelessness: her housing costs are greater than her income. Her disability means she is unlikely to see an increase in income. The denial of her application would likely mean she would become homeless or be subjected to inadequate and/or transient and/or substandard housing for the remainder of her life.

Accordingly, the Court enters the following Order.

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<sup>6</sup> The Court notes that the forms were completed without the benefit of a face to face meeting or within the presence of any employee who could answer questions. The Court further notes that Kennedy King is now a part of the LHA and it is reasonable to believe they would have information about her prior tenancy, and in fact they did.

ORDER

AND NOW, this 5<sup>th</sup> day of **June 2017**, for the foregoing reasons, it is ORDERED and DIRECTED that the appeal is SUSTAINED; the decision of the Lycoming Housing Authority to reject Jeanette Ward's application for participation in the housing choice voucher program is REVERSED. The Lycoming Housing Authority is DIRECTED to process Ms. Ward's application as if it had been approved as of March 13, 2017. In light of this ruling, Ms. Ward's petition for injunction is dismissed as MOOT.

BY THE COURT,

June 5, 2017  
Date

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Richard A. Gray, J.

c: Norman M. Lubin, Esquire  
Wesley S. Speary, Esquire